Pioneers
Pionniers
2000

A National Conference
on Canadian Immigration

Conférence nationale
sur l'immigration

BACKGROUND PAPER 4

AUSTRALIAN IMMIGRATION POLICY AND OUTCOMES DURING THE 1990S

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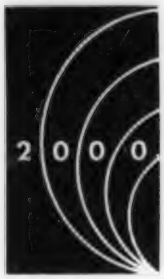

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INTRODUCTION

During the 1990s Australian immigration policy took a sharp turn towards a more restrictive, selective and cost-conscious regime. By the end of the 1990s Australia's policy had more in common with that of the "fortress" stance of Western Europe's than it did with Canada's. This contrast with Canada's current expansive policy setting may be of particular interest to a Canadian audience.

THE IMMIGRATION POLICY SETTING AT THE END OF THE 1980s

By the end of the 1980s it seemed to some observers that high immigration to Australia was "unstoppable" *(Castles et al 1992, 169)*. The Labor government at the time seemed intent on maintaining a high immigration program of at least 120,000 per annum. It had embraced immigration as a positive element in its objective of incorporating Australia into the booming Asian marketplace. It had committed itself to multicultural policies which, to a degree, celebrated the ethnic diversity resulting from the influx of Asian migrants since the late 1970s. There was widespread endorsement of a liberal immigration policy within elite political, economic and cultural circles.

There was also evidence consistent with theorists like Hollifield, that in a context of increased attention to human rights, the Australian government would have difficulty reducing the immigration program even if it wanted to *(Hollifield, 1992)*. During the 1980s the government faced an increased number of claims for permanent residence from visitors and other temporary entrants, including those who had overstayed their visas or who had entered the country illegally in the first place. Many of these claims were successful despite the opposition of the Immigration Department. This was in part due to the granting of legal standing in Australia's courts to persons who were not permanent residents. As a consequence, such persons could press their case in the courts against any decisions on the part of the Australian government to exclude them. In particular, there was a sharp rise in the number of successful permanent residence claims made on the basis of marriage on the part of people in Australia on temporary visas (or who had overstayed their visas). Court rulings made it very difficult for the Immigration Department to oppose these claims *(Birrell 1992: 31-32)*.

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The influx of persons seeking asylum as refugees after arriving in Australia also appeared to imply further rapid growth in immigration. By the time of the Tienanmen massacre in June 1989 there were some 27,000 Chinese students in Australia on short term visas. Many had already overstayed their visas. Almost all indicated their wish to stay in Australia and they were granted temporary residence while the government pondered the situation. As of mid -1989 another 20,000 student visa applications from Chinese students were in the pipeline. Most of these applications were granted and when their visas elapsed these students stayed on too, with large numbers seeking refugee status. Another severe challenge to the government's capacity to control the intake came with the arrival between November 1989 and October 1991 of some 652 unauthorised boat people, mostly from Cambodia. They too sought asylum status as refugees.

THE RESPONSE: Australian Immigration Policies in the 1990s

Since the late 1980s the trend has been towards retreat and contraction, as governments have sought greater control over the management of the selection process and the management of claims to permanent residence made from within Australia.

There is not space to analyse why this turnabout occurred. But in essence what happened was that both of the two major political parties, the Labor Party and the Liberal Party, decided that public concerns about the social and economic tensions resulting from the high migration intakes of the 1980s and the concurrent swing towards Asian source countries were becoming electorally hazardous. By the end of the 1980s concerns about the government's capacity to manage the immigration program in the interests of the wider public had created the impression that it was getting "out of hand." These concerns included the management of change of status claims referred to above, the challenge of multiculturalism to mainstream patriots and issues linked to the changing ethnic makeup of the immigrant intake, including its increasing Asian component and the geographical concentration of such immigrants, particularly in Sydney.

Ironically, one catalyst to this political response derived from the report of an official inquiry into Australia's immigration policies in 1988. The Committee to Advise on Australian's Immigration Policies (CAAIP) concluded that poor management of Australia's immigration policies had resulted in "Widespread mistrust and failing consensus (which) threaten community support of immigration. The program is not identified in the public mind with the national interest, and must be given a convincing rationale" *(CAAIP 1988: xi)*.

The debate following this report drew in the leader of the Liberal Party, Mr Howard, whose subsequent critical remarks, as Leader of the Opposition, about the level of Asian migration further raised the temperature. The politics of the time have been reviewed in a number of publications *(Jupp, 1993)*. Mr Howard was roundly condemned for his intervention. It appears to have been an important factor in his (temporary) loss of the party's leadership in 1989. But though this debate was a triumph for advocates of immigration and multiculturalism, it also indicated the potential for immigration to become a decisive electoral issue and thus of the need for tighter management and control. To judge from public opinion polls this potential is much greater in Australia than in Canada. During the 1980s and 1990s there have been consistent majorities in national polls taken in Australia, showing around 65% want lower immigration. At the end of the 1990s these views were exploited by Pauline Hanson's One Nation party. Hanson proved that earlier fears on this account were well-founded. Nevertheless most of the changes to immigration policy discussed below predated the emergence of One Nation.

A final impetus to a retreat from the high migration levels of the late 1980s was the deep recession of the early 1990s and the associated mounting evidence of labour market disadvantage among recently arrived immigrants. The recession dramatised the fact that a high proportion of the recently arrived professionals were unable to convert their credentials into professional or managerial level positions. Those with limited Australian experience, poor English and backgrounds in countries Australian employers had little knowledge of tended to go to the back of the queue when job competition intensified.

There were various responses to this situation. Immigrant advocates demanded more government assistance to skilled migrants by way of remedial training and an offensive against what they saw as territorial border control on the part of professional associations reluctant to consider the merits of immigrant credentials. Other commentators were critical of the Australian government's skilled selection system, particularly the absence of any formal testing of English language capabilities (applicants simply ticked a box to indicate their English level) for those assessed under the points test, applicants in the Independent skilled category, and no assessment of English at all for the Concessional category (similar to the Assisted Relatives category in the Canadian program of the early 1990s). Opposition from major engineering, medical and other professional associations about continued intakes of people surplus to current needs added to the case for tighter control over selection.

1. The Management of Immigration Policy in the 1990s

There was a decisive cut back in the immigration program for 1992-1993. As shown in ***Table 1*** this decision set the pattern for the rest of the 1990s. Program numbers for all categories except for "spouses/fiancés" during the 1990s were maintained well below those of the late 1980s. Skilled immigration was slashed in the early 1990s, including an effective abolition of the Business Migration program. Though the overall parameters of the program were set by the government of the day, the task of managing the reduction fell to the Immigration Department. To achieve the required reductions and to re-establish public confidence in the immigration program was a major task given the political and legal situation described above. It is doubtful whether it could have been accomplished in the absence of a strong bureaucratic commitment to do the job.

TABLE 1: Immigration Program Visas Granted

Immigration Category and Component	1990 to 1991	1991 to 1992	1992 to 1993	1993 to 1994	1994 to 1995	1995 to 1996	1996 to 1997	1997 to 1998	1998 to 1999	Planned 1999-2000
Family										
Spouses/Fiancés	24,500	26,300	27,800	25,100	26,100	33,500	25,130	25,790	24,740	27,000
Parents	10,300	7,200	5,300	4,500	5,100	8,890	7,580	1,080	3,120	500
Dependent Children	2,000	2,200	2,700	2,500	2,500	2,830	2,200	2,190	2,070	2,350
Other	2,000	2,000	1,700	1,700	3,100	3,450	2,330	2,250	2,100	2,150
Concessional Family*	22,500	18,100	7,700	9,400	7,700	8,000	7,340	-	-	-
Total Family	**61,300**	**55,900**	**45,300**	**43,200**	**44,500**	**56,700**	**44,580**	**31,310**	**32,040**	**32,000**
Skill										
Employer Nominations	7,500	5,600	4,800	4,000	3,300	4,640	5,560	5,950	5,650	6,000
Business Skills	7,000	6,200	3,300	1,900	2,400	4,900	5,820	5,360	6,080	6,000
Distingusihed Talents	100	200	200	200	100	200	190	180	210	200
Independent	35,100	29,400	13,000	11,800	15,000	10,600	15,000	13,270	13,640	14,300
Skilled-Australian Linked*	-	-	-	-	-	-	-	9,540	9,240	8,400
1 November Onshore	-	-	-	500	9,600	3,800	980	370	180	100
Total Skill	**49,800**	**41,400**	**21,300**	**18,300**	**30,400**	**24,100**	**27,550**	**34,670**	**35,000**	**35,000**
Special Eligibility	*1,200*	*1,700*	*1,400*	*1,300*	*1,600*	*1,700*	*1,730*	*1,110*	*890*	*3,000*
Humanitarian	*11,300*	*12,000*	*11,800*	*12,700*	*13,270*	*15,050*	*11,910*	*12,055*	*11,360*	*12,841*
Total Program	**123,500**	**110,900**	**79,700**	**75,500**	**89,770**	**97,550**	**85,810**	**79,155**	**79,260**	**82841**

SOURCE
NOTE

An important administrative measure which was to lay the ground work for the control measures of the 1990s was put in place in the late 1980s. In order to reduce the influence of the courts in the implementation of immigration policy, the Immigration Department transformed its regulatory structure in 1989 so as to minimise the scope for applicants, their lawyers and the courts to evade the policy's intent. It did this by, as far as possible, removing any scope for administrative discretion on the part of decision making officers, or by the courts when interpreting these officers' decisions, by detailed specification of all departmental regulations. These regulations, which covered all facets of the department's operation including humanitarian, family and skilled entry, were given the status of law by incorporating them into acts of parliament.

2. Illegal Entry and Asylum Cases

In order to reduce the number of on-shore humanitarian claims the government contracted the circumstances under which such claims were acceptable. With these circumstances written into law, the scope for court action to widen the basis for such claims largely disappeared. The situation for refugee claimants was different because the Australian Government is a signatory to the International Convention on Refugees and, therefore, is bound to consider all claims for asylum according to the criteria specified in the Convention.

In response to this situation, the Keating Labor government, with opposition support, passed the 1992 Migration Reform Bill. This gave the Australian government the power to detain all persons illegally in Australia. Though most could subsequently be released pending the hearing of their cases, those who entered Australia without legal authority (including boat people) by law were not to be released. The purpose was largely to deter prospective unauthorised entrants. Nevertheless, asylum claims still had to be heard. In order to truncate the process, the Migration Reform Act limited the grounds of appeal against a negative decision. In the case of the Chinese students discussed above, their situation was resolved through a series of quasi amnesties. Such was the number of claimants that to have heard all on an individual basis would have clogged the refugee review and court system. The Government has since sought to avoid a repetition of this incident by tightly managing entry of visitors or students from countries like China where there is a strong chance of a subsequent change of status claim.

The upsurge in boat people arrivals in 1999, mainly persons of Middle Eastern origin, shows that the control system can still be breached. Since many of these claimants originate from Iraq their claim for refugee status is plausible. In dealing with this challenge the Coalition Government, this time with Labor opposition support, has sought to add to the deterrent effect of its custody requirements by limiting the grant of refugee status to three years, during which time there will be severe limits on access to welfare benefits and no rights of family reunion or return to Australia should the recipient wish to travel overseas.

The Australian government has maintained a refugee and humanitarian program of around 12,000 per year over the past two decades (though with the quasi amnesty for the Chinese students and some others, the real figure is somewhat higher). Successful on-shore cases are deducted from this program. This figure is far below the current level in Canada (around 27,000 in the mid-1990s), nearly half of whom obtained refugee status through on-shore asylum claims.

3. Family Reunion

Family reunion presented a particular challenge to successive governments during the 1990s because of the impetus to further growth deriving from the high propensity of recent arrivals to sponsor their relatives and the political difficulties of constraining programs with strong support within the ethnic communities.

On the other hand, the budgetary settings faced by successive governments during the 1990s, which involved continual pressures to reign in expenditures, prompted attention to any source of spending that might be curtailed. The family reunion program was delivering a substantial flow of low skilled, non-English speaking and relatively capital poor immigrants who often needed welfare assistance. During the 1990s there was a much

publicised debate about high levels of welfare benefit dependency on the part of newly arrived immigrants, whether they were intent on entering the labour market or not (including most parents). By the mid-1990s almost a third of immigrants intending to enter the labour market were in receipt of Commonwealth benefits during their first three years in Australia. This kind of evidence fed public concerns that the nation's tax system was being bled by new arrivals who had not contributed to the nation's wealth.

Successive governments during the 1990s responded by winding back access to welfare benefits and by tightening the rules governing family reunion. As to the first, the Labor government began the process in 1991 when it imposed a two year bond on the sponsors of parents ($3,500 for the principal applicant) which was repayable if no social security benefits were paid out during the time of the bond. Then in 1994 Labor implemented a moratorium on the payment of most social security benefits for the first six months of residence for all immigrants except those entering under the humanitarian categories. In 1996, the new Coalition government, with the support of the Labor opposition (though not the Democrats) extended this moratorium to two years.

There has also been a parallel contraction in family reunion rights. Labor began the process with the introduction of a Balance of Family ruling in 1989 for all parent sponsorships. Parents could only be sponsored where half or more of the children were resident in Australia. This effectively stopped such sponsorships for recently immigrated communities where the normal number of siblings per family was three or more and where (as was usually the case) insufficient time had elapsed for more than one of the siblings to have immigrated. In such cases, parent sponsorship was in effect debarred. As ***Table 1*** shows the number of parent visas did fall sharply in the early 1990s.

However the numbers began to build again in the mid 1990s (despite the bond requirement) partly as a consequence of sponsorships from the former Chinese students who achieved permanent residence status at the time. Most of these students had few siblings and thus were not effected by the Balance of Family provision. When the Coalition came to power in 1996 it sought to tighten the Balance of Family rules again (by requiring more than half of the children to be resident in Australia). It was unable to get this legislation through the Parliament and instead sought the power to put a quota on the number of parents allowed to enter in any program year. This measure passed into law in March 1997 with Labor support *(Birrell 1997: 24)*. Thereafter, the Coalition government cut the number of visas issued to parents from 7,580 in 1996-97 to 1,080 in 1997-98, 3,120 in 1998-99 and has planned an intake of just 500 in 1999-2000.

Table 1 shows that there was an upward trend in visas issued to spouses and fiancés, which peaked in 1995-96, the last year of the Labor government. There are a variety of factors which account for the subsequent decline. One is that by the late 1990s most of the Chinese students granted permanent residence had reunited with former spouses or returned for a partner, if not married. In addition, the Coalition government has attempted, with varying success to implement control measures. It unsuccessfully sought the power to cap spouse visas *(Birrell 1997: 12-13)* but has used the powers already on the books when it came to office in 1996 to cap the issuance of fiancé visas (to about half the previous peak of around 6,000). Thirdly, it implemented tougher bona fide tests for assessing whether the claimed relationship is genuine. Finally, in 1997, new rules were introduced (again with Labor's support) to initially limit spouse visas to two years, pending subsequent proof that the partnership is "genuine and continuing."

The Concessional category has effectively been eliminated as a family reunion right. In 1997 the Coalition government incorporated the Concessional category within its skilled program and renamed it the Skilled Australian Linked (SAL) category. Applicants were required to possess the same English language and other skill requirements (described below) as Independent applicants. All that remained by the year 2000 of the old Concessional category was a minor points concession for the siblings or other more distant relatives sponsored by Australian residents.

4. Skilled Migration

Reform of the skilled migration program followed the pattern described above. The numbers visaed have been cut sharply since the late 1980s and the selection system tightened so as to target immigrants with skills more likely to meet Australian employers needs.

The reform has focussed around tightening English language and qualifications requirements. In 1992, the Labor government stipulated that all Independent applicants had to have their English language skills assessed via a professionally constructed English test *(Hawthorne, 1995)*. At this time, applicants who did poorly on this test were not automatically failed. However, for some occupations, labelled "occupations requiring English", a minimum standard of English was required. These occupations included teaching, engineering and all of the health professions (though not accounting, computing or most of the trades).

In 1999 this precedent was extended by the Coalition government. Minimum English standards were made a compulsory requirement for all applicants under both the Independent and SAL categories. Applicants had to be able to speak, read, write and comprehend English at a "vocational" level to be selected, regardless of the points they scored on other selection criteria.

In the case of qualification requirements, there has been a move towards requiring all applicants to possess credentials recognised by accrediting professional and trade agencies in Australia. It is no longer enough to be well educated. The education has to be related to job requirements in Australia. In 1999 the Coalition cemented this reform by making the recognition of credentials a necessary condition under the Independent and SAL categories.

Throughout the 1990s, when these reforms were implemented, the overall size of skilled immigration was kept at a much lower level than it was in the late 1980s. Thus, competition for entry has been tight, and as a consequence, skilled migrants have been better equipped to find skilled positions in Australia than was the case in the 1980s.

The extent to which programs are now tailored to meet Australia's needs is reflected in another 1999 reform. This gives priority to applicants who have been trained in Australia. Such persons have much better employment records than their counterparts from the same countries who have trained overseas. Previously, students from overseas who had studied in Australia were required to return home (at least for a couple of years). Since mid-1999 they have been allowed to apply as permanent residents under the Independent and SAL categories on completion of their courses and are given bonus points for their Australian qualifications if they do. Such students will soon dominate these categories.

5. Temporary Entrants

At the same time as the formal immigration program has been reduced and tightened, there has been a major expansion in the number of persons coming to Australia on a temporary basis. These include skilled immigrants employed on short term contracts, business visitors, students, working holiday makers and short term visitors (mainly tourists). In every case arrival numbers have tended to increase. Another important source is New Zealanders. They are permitted to move to and from Australia (including persons who have immigrated to New Zealand and have taken out New Zealand citizenship, which is available after three years residence) without any of the visa restrictions applying to other overseas-born persons. (Note, the New Zealand inflow is not included in Table 1). By the 1990s, New Zealand was the largest source country for persons stating that they were coming to Australia either on a permanent or a long term (a year or more) basis.

However, except for the New Zealanders, these temporary entrants are a revolving group. The hallmark of most of these programs is that they are designed to meet specific Australian needs, with a minimum of cost to Australian taxpayers and no long term commitment to settlers. An important example is the temporary skilled program. Since August 1996 (as a result of a

Labor Government initiative) Australian employers have been able to recruit as many skilled workers on short term contracts as they want. The previous requirement that the sponsor first prove that the skills in question are not available in Australia was abolished. By 1998-99 about 16,000 visas to principal applicants under this program were issued. The workers in question are the responsibility of the sponsoring firms. They have no welfare entitlements and they are normally not allowed to switch employers.

CONCLUSION

Though the changes described amount to a fundamental change in direction of Australian immigration policy, there is no presumption that a swing back to the more expansive policies of the 1980s is out of the question. There is currently a fierce debate in progress about immigration policy in Australia, led by business interests seeking a larger intake. It remains to be seen whether they are successful. ■

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